

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**



CC: to:  
U.S. Attorney,  
S.D. N.Y.  
(Attorney for Appellees).

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT  
CARL EDELSON,

Appellant.

-vs-

DEPARTMENT OF HEALTH, EDUCATION  
AND WELFARE, and SOCIAL SECURITY  
ADMINISTRATION,

Appellees.

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: DOCKET NO: 76-6086  
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: BRIEF FOR APPELLANT.  
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X

STATEMENT

This is an Appeal from a decision rendered May 5, 1976, by the United States District Court, Southern District of New York (GAGLIARDI.D.J.) denying Appellant's Petition for the return to him of Social Security Deductions taken from his wages all of his working years.

ISSUE INVOLVED

WHETHER THE CONGRESS OF THE UNITED STATES  
CAN LEGALLY WITHOUT APPELLANT'S CONSENT  
FORCE HIM TO BECOME A PARTICIPANT IN THE  
SOCIAL SECURITY SYSTEM, AND THUS FORCE HIM  
TO RETIRE AT AGE 65 IN ORDER TO COLLECT ANY  
BENEFITS FROM SUCH SYSTEM ?

The Papers in this Case are set forth in a Separate Record on Appeal which have been submitted to this Court. Without desiring to reiterate the contents therein, in brief, it is Appellant's contentions that he should have the option as to whether or not he desires to become a participant in Social Security. It is his contention that, that part of the Act which forces him to become a participant therein is unconstitutional, and without due process of law.

In other words, Appellant contends that he should be refunded all of his monies deducted from his wages and be allowed to have the choice of withdrawing from the Act and get his monies in one lump sum that was taken from his wages under Social Security Deductions.

The Court below in its denial memorandum, and the Government's opposing memorandum of law, contend that Social Security Deductions from Wages is a Tax and not a Contribution.

POINT ONE

THE PRECEDENTS CITED BY THE COURT BELOW  
ARE CONTRARY TO THE CHALLENGE BY THE  
APPELLANT AND NOT IN POINT WITH THE  
APPELLANT'S ARGUMENT.

The decisions cited by the Court below only deal with the Constitutionality of the Social Security Act itself, and does not meet Appellant's arguments.

Appellant does not question the wisdom of the Act itself, but only questions the power of Congress to force Appellant to be a participant in the Act. It is Appellant's contentions that he should be the one who should have the option to decide whether he wants Social Security Retirement Benefits or not.

If, as the Court below, states, that Social Security is not a contribution but a tax, then the Act has misled those participants since 1935, when the Act went into effect, into the belief that they had a vested right in the contributions made therein and that the Act was for the benefit of those participants. (See Booklet on Social Security, DHEW Publication No. (SSA) 74-10015, February, 1974) wherein it states that

such contributions are not a tax on wages.

If Appellant invested the deductions taken from his wages under Social Security in insurance or savings banks, he would be allowed to name any beneficiary in event of his death, under Social Security he cannot do so. In the event of his death, under Social Security, the Government becomes his beneficiary, which Appellant contends is taking his property without due process of law.

It is now up to this Court to decide whether or not Social Security is a Tax or contribution. If it is a Tax then the law itself is unconstitutional, because Tax on wages is deducted under the Federal Withholding Tax Act, and to have TWO forms of withholding tax on wages earned, is double taxation, which is double jeopardy, and illegal.

If it is a contribution, which it is, then the appellant should have the option whether or not he wants to make any contributions.

Wherefore, appellant respectfully submits that the Decision below should be reversed and appellant granted the relief he seeks herein.

RESPECTFULLY SUBMITTED,

Dated: June , 1976.  
TO: U.S. ATTORNEY,  
S.D.N.Y.

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CARL EDELSON  
Appellant ( Pro Se)

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COPY RECEIVED

Robert B. Luke J.

UNITED STATES ATTORNEY

6/1/76

J.